CF0000057854

(2)

Session Case (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

Criminal Appeal No. 99 of 1995

Appellant: Accused (In Jail) Manoj Kumar, aged about 27 years, son of Shri Ranjeet Singh Taroha, resident of Nagal Khedi, P.S. Panipat Sadar (Haryana).

versus

Respondent: The State of M.P.

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE, 1973

115-9.

Filed on 18.1.95
by Shri Jitendra Jain
Advocate

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(32)

आदेश पत्रक

मामला क्रमांक G.A. 99/95 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

17-1-2006

Mr. Gouri Shanker Singh, counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor for the State/respondent.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J: -

By this appeal, accused Manoj Kumar has questioned the legality of the judgment of conviction and order of sentence dated 1-12-1994 passed by the 4th Additional Sessions Judge, Durg, in Sessions Trial No.282/92, whereby learned Additional Sessions Judge after holding the accused/ appellant guilty for commission of offence under Section 302 of the I.P.C. sentenced him to undergo imprisonment for life.

The prosecution case, in brief, necessary for the disposal of this appeal is that on 10th September, 1990, the third reserve battalion of the Central Industrial Security Force (CISF) was posted at Utai, accused/ appellant Manoj Kumar was employed as Sepoy and deceased Jarnail Singh was working as Inspector. In the morning of 10-9-1990, the battalion was busy in parade and during that parade apart from deceased Jarnail Singh, Assistant Sub Inspector Laxman Singh (PW-1), Sub Inspector Chering Tandupo (PW-3), Assistant Sub Inspector Brahmadev Singh (PW-5), Deputy Commandant J.K. Oseph (PW-10), Gangaram Assistant Sub Inspector (PW-11), Sub Inspector Chanchal Singh (PW-12) and Assistant Commandant S. Kumbarwal (PW-20) were on duty. Anil Sharma (PW-17), Sub Inspector was

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(33)

आदेश पत्रक

मामला क्रमांक GA 99/95 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

posted as Duty Officer. The duty of accused Manoj Kumar was for protection of the parade. One Dalchand (PW-6) was also on protection duty during the parade. A rifle bearing butt No.39 along with 20 cartridges were issued to accused Manoj Kumar from the armory of the battalion on that day, at about 6.10 a.m. After completion of the parade, persons were going for breakfast, at that time, accused Manoj Kumar shot dead Inspector Jarnail Singh with the rifle which was issued to him, he fired four rounds on the deceased as a result of which Jarnail Singh died and thereafter, the accused after throwing the rifle fled away on a motorcycle by snatching the same from some one. Some officers and constables chased the accused, but they were not able to catch him. B.S. Thakur (PW-22) lodged the report at Police Station: Utai at 9 a.m. on which the Dehati Nalishi (Ex.P-16) was reduced into writing and thereafter, the F.I.R. (Ex.P-18) was registered. Jarnail Singh was sent to the Sector-9 Hospital from where the information Exs.P-20 and P-21 were sent. Post-mortem of the body of Jarnail Singh was conducted by Dr. D.C. Jain (PW- 4) who prepared the report Ex.P-6 in which he opined that the cause of death is shock and haemorrhage due to injuries to heart, lungs and bones by bullet. After giving notices (Ex.P-8) to the witnesses Panchnama of the body Ex.P-9 was prepared by the Investigating Officer. Site plan Ex.P-12 was prepared by Patwari Suraj Ram Sahu (PW-16). During police custody, the accused gave memorandum Ex.P-14 regarding ten cartridges. From the place of occurrence, the Investigating Officer took into possession plain soil and blood stained soil under Ex.P-3, and four empty cartridges under Ex.P-4, which were fired by the accused. Under Ex.P-5 the rifle was taken into possession from the place of occurrence and the rifle in question was sent for examination to the Forensic Science Laboratory, Sagar, under Ex.P-22.

[पीछे देखिये

(34)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक G.A. 99/95 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 3 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Recovered articles were sent to the Forensic Science Laboratory under Ex. P-23. Report of the Ballistic expert Ex.P-24 was received.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Durg, who in turn committed the case to the Sessions Judge, Durg, from where learned 4th Additional Sessions Judge, received the case on transfer for trial.

The prosecution in order to establish charge against the accused examined 22 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence appearing against him and stated that he is innocent and has been falsely implicated in the crime. Learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused, convicted and sentenced the accused as mentioned in para 1 of this judgment.

We have heard Mr. Gouri Shanker Singh, learned counsel for the accused/appellant and Mr. U.N.S. Deo, learned Additional Public Prosecutor on behalf of the State/respondent.

The homicidal death of Inspector Jarnail Singh is not in dispute. Apart from that, Dr. D.C. Jain (PW-4) who conducted post-mortem on the body of Jarnail Singh has stated that the death of Jarnail Singh was as a result of bullet injuries of the rifle and his report is Ex.P-6. He noticed as many as four bullet injuries on the body of the deceased. Dr. Shyam Duna (PW-14) has also stated in his evidence that he issued the death certificate Ex.P-11 and found that there were bullet injuries on chest, right shoulder & right forearm, there were seven wounds on the chest, and the right hand bone was

[पीछे देखिये

(35)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक G.A. 99/95 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

fractured. Apart from the medical evidence, and the evidence of the eyewitnesses namely, Laxman Singh (PW-1), Chering Tandupo (PW-3), J.K. Oseph (PW-10), & S. Kumbarwal (PW-20) who have stated in their evidence that they witnessed the crime and the accused/appellant shot dead Jarnail Singh with the rifle, it is established that the death of Jarnail Singh was homicidal in nature.

As far as the involvement of the accused/appellant in the crime in question, Laxman Singh (PW-1), Assistant Sub Inspector has stated in his evidence that on 10-9-1990 he was participating in the parade, during the parade, the accused was on rifle duty, the parade was over at 7.40 a.m. and Jarnail Singh was also on duty during the parade. When the parade was over, some persons were going for breakfast and some persons boarded the bus, accused Manoj Kumar shot dead Jarnail Singh with the rifle. The bullet hit on the left hand of the deceased as a result of which deceased Jarnail Singh fell down, thereafter, the accused again fired three shots on the chest of Jarnail Singh and he died. Inspector Umarval & Assistant Commandant Joseph were also present at the scene of occurrence.

The above evidence of this witness (PW-1) has been corroborated by Chering Tandupo (PW-3) who has also stated that on 10-9-1990 at 7.40 a.m. he was on the parade ground, Kumbarvar, J.K. Oseph, Chanchal Singh Sub Inspector & Gangaram Assistant Sub Inspector were also present there. After the parade was over, the accused shot gunfire on Jarnail Singh. The accused shot second fire from the rifle, thereafter, he again fired one round on Jarnail Singh and blood was oozing out of the injuries. Jarnail Singh started running, the accused chased Jarnail Singh and again fired one shot

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(36)

आदेश पत्रक

मामला क्रमांक G.A.99/95 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

on him, Jarnail Singh fell down. Accused Manoj Kumar after snatching a motorcycle fled away form the scene of occurrence.

Brahmadev Singh (PW-5) has stated in his evidence that he saw the accused fleeing away on a motorcycle whereas he was on duty, wearing uniform and he saw that blood was oozing out of the shoulder of Jarnail Singh and he died on the spot.

J.K. Oseph (PW-10) has stated in his evidence that he was also on duty on 10-9-1990, the parade was over at about 7.45 a.m. and he saw the accused on duty at the parade ground with a rifle wearing uniform. At that time, he heard a sound, when he turned towards the sound he saw that the accused was standing pointing the gun towards Jarnail Singh and Jarnail Singh was standing at 10-12 yards distance. Jarnail Singh was asking Manoj Kumar after indicating, 'do not do anything'. Manoj Kumar was on guard duty, therefore he was having bullets with him. When Jarnail Singh was trying to run away, Manoj Kumar chased him and fired three bullets at Jarnail Singh, Jarnail Singh fell down.

S. Kumbarwal (PW-20), Assistant Commandant, has stated in his evidence that on 10-9-1990, accused Manoj Kumar was constable in his battalion and Inspector Jarnail Singh (deceased) was also in his Company. On 10-9-1990 at about 7.45 a.m. Inspector Jarnail Singh was on duty at the parade ground and three persons were on security duty with rifle and 20 rounds each. Accused Manoj Kumar was also on the arm security duty with a rifle and 20 rounds. Thereafter, he saw that the accused fired gunshot on Jarnail Singh.

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(37)

आदेश पत्रक

मामला क्रमांक G.A. 99/95 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 6 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

In view of the above evidence, it is established that accused Manoj Kumar, while on the duty of guard, fired gunshot at Jarnail Singh. In cross-examination of these witnesses, defence has not been able to elicit any circumstance, which makes the evidence of these witnesses untrustworthy or unreliable.

P.K. Pawar (PW-19) has stated in his evidence that on 10-9-1990, he was posted as Head Constable in the Bhilai Unit of CISF and his duty was on the battalion armory. On that day he issued one rifle butt No.39 with 20 cartridges at 6.10 a.m. and signatures of Manoj Kumar are at 'A to A' in the register regarding issuance of rifle to him. Entry of the register is Ex.P-1A.

Therefore, in view of the above evidence, it is established that the accused was on duty at the parade ground with rifle butt No.39 with 20 rounds and he fired four rounds with the rifle on Jarnail Singh as a result of which Jarnail Singh received injuries and died spontaneously because of the bullet injury on chest.

In the circumstances, the involvement of the accused/appellant in committing the murder of Jarnail Singh is established beyond reasonable doubt.

Apart from that, the accused while running away made extra judicial confession before N.K. Acharya (PW-15), Constable, who has stated in his evidence that on 10-9-1990 he was on duty at the residence of Commandant B.S. Rana, at that time, he saw that the accused was running away on a motorcycle and the accused said that he has committed the murder of Jarnail Singh, lift him. Bachittar Singh (PW-8) has also given similar evidence and stated that on 10-9-1990 he was on duty at the residence of Commandant

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(38)

आदेश पत्रक

मामला क्रमांक G.A.99/95 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

B.S. Rana, the accused was running away on a motorcycle and said that he has committed the murder of Jarnail Singh, take care of him. B.S. Rana (PW-9) has stated in his evidence that on 10-9-1990 he was at his residence, at about 8 a.m. Tarsem Singh (PW-7) & Bachittar Singh (PW-8) informed him that accused Manoj Kumar was running away on motorcycle and stated that he has committed the murder of Jarnail Singh.

In cross-examination of these witnesses, defence has not been able to elicit anything, which makes the evidence of these witnesses untrustworthy or unreliable. Therefore, in view of the above evidence, it is established that the accused made extra judicial confession before these witnesses.

In the circumstances, in view of the extra judicial confession made by the accused/appellant before Tarsem Singh (PW-7), Bachittar Singh (PW-8) & N.K. Acharya (PW-15) and also in view of the evidence of the eyewitnesses namely, Laxman Singh (PW-1), Chering Tandupo (PW-3), J.K. Oseph (PW-10), & S. Kumbarwal (PW-20), it is established that the accused/ appellant was the author of the crime in question.

In the result, we do not find any illegality or infirmity in the judgment of the trial Court convicting the accused/appellant for commission of the murder of Jarnail Singh and the appeal is devoid of any merit, same is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C. BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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